

WO

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Mark E Stuart, et al.,

No. CV-21-01917-PHX-DJH

Plaintiffs,

ORDER

V.

City of Scottsdale, et al.,

Defendants.

Pro se Plaintiffs Mark Stuart and Virginia Stuart have filed a Motion under Federal Rule of Civil Procedure 59(e) (“Motion”) (Doc. 75) seeking to amend the Court’s September 9, 2024, Order (“September Order”) (Doc. 71). In the September Order, the Court dismissed all but one of Plaintiffs’ claims: a 42 U.S.C. § 1983 claim in Count Three against individual Defendants City Attorney Scott (“Scott”), Scottsdale Assistant City Attorney Santaella (“Santaella”),¹ and Scottsdale City Manager Thompson (“Thompson”). (*Id.*) Plaintiffs’ Count Three alleges that Defendants City of Scottsdale (the “City”), Scott, Santaella, and Thompson violated Plaintiffs’ Fourth Amendment rights when they unreasonably withheld Plaintiffs’ guns and ammunition for ninety days. (Doc. 71 at 11; Doc. 36 ¶¶ 165–78). Plaintiffs say the Court erred by failing to recognize that Count Three also alleges a Fourth Amendment unreasonable seizure claim against the City under *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658 (1978) (“*Monell*”). (Doc. 75 at 4). Defendants

¹ The Court initially stated Count Three could proceed against Defendant Bruce Washburn; the Order was amended on October 22, 2024, to correctly state Count Three could proceed against Defendant Santaella. (Doc. 86).

1 disagree and say Plaintiffs' Count Three *Monell* claim suffers from the same deficiencies
 2 as Plaintiffs' Count Four's *Monell* claim, which the Court dismissed in its September
 3 Order. (Doc. 82).² The Court agrees.

4 **I. Legal Standards**

5 Federal Rule of Civil Procedure 59 provides that a party may move “to alter or
 6 amend a judgment” or dismissal with prejudice within 28 days after the order or judgment
 7 is entered. Fed. R. Civ. P. 59(e). Because Rule 59(e) does not identify “specific grounds
 8 for a motion to amend or alter. . . , the district court enjoys considerable discretion in
 9 granting or denying the motion.” *Allstate Ins. Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir.
 10 2011) (internal quotation marks and citation omitted). Caselaw generally recognizes that
 11 a Rule 59(e) motion to alter or amend a judgment may be granted in four limited
 12 circumstances: (1) when necessary to correct manifest errors of law or fact upon which the
 13 judgment rests; (2) when necessary to present newly discovered or previously unavailable
 14 evidence; (3) when necessary to prevent manifest injustice; or (4) if the amendment is
 15 justified by an intervening change in controlling law. *Id.* Rule 59(e) may not, however,
 16 “be used to relitigate old matters, or to raise arguments or present evidence that could have
 17 been made prior to the entry of judgment.” *Exxon Shipping Co. v. Baker*, 554 U.S. 471,
 18 485 n.5 (2008) (citation omitted); *see also Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d
 19 877, 890 (9th Cir. 2000) (noting that Rule 59(e) offers an “extraordinary remedy, to be
 20 used sparingly in the interests of finality and conservation of judicial resources”) (internal
 21 quotation omitted); *Bollenbacher v. Comm'r of Soc. Sec.*, 621 F. Supp. 2d 497, 501 (N.D.
 22 Ohio 2008) (stating that a Rule 59(e) “motion is not a substitute for appeal and does not
 23 allow the unhappy litigant to reargue the case”). Nor should parties ask a court “to rethink
 24 what the court had already thought through—rightly or wrongly.” *Defenders of Wildlife v.*
Browner, 909 F. Supp. 1342, 1351 (D. Ariz. 1995).

26 Indeed, disagreement with an order is an insufficient basis for reconsideration under
 27 Rule 59. *Ariz. Dream Act Coal. v. Brewer*, 945 F. Supp. 2d 1049, 1078 (D. Ariz. 2013).

28 ² Plaintiffs also filed a Reply in support of their Motion (Doc. 88).

1 Such disagreements should be dealt with in the normal appellate process. *See Ramsey v.*
 2 *Arizona*, 2006 WL 2711490, at *1 (D. Ariz. Sept. 21, 2006). Denial of a motion for
 3 reconsideration under Rule 59(e) will not be reversed absent a showing of abuse of
 4 discretion. *See Allstate Ins. Co.*, 634 F.3d at 1111. Thus, the moving party has a “high
 5 hurdle” in order to obtain post-judgment relief. *See Weeks v. Bayer*, 246 F.3d 1231, 1236
 6 (9th Cir. 2001).

7 **II. Discussion**

8 Plaintiffs argue relief is justified under Rule 59(e) to correct manifest errors of fact
 9 that the Court overlooked in failing to ascertain that Plaintiffs’ Count Three alleged a
 10 *Monell* claim against the City. Plaintiffs say that though “the Court acknowledged that [the
 11 City of] Scottsdale was named in Count 3, [it] did not analyze the Monell pleading under
 12 Count III.” (Doc. 75 at 4). Defendants says there was no error because like Count Four,
 13 Plaintiffs’ pleading fails to identify what the purported policy is that led to Plaintiffs’
 14 constitutional violation. (Doc. 82 at 3 (querying whether the purported policy is “a
 15 declination to hand firearms over on demand? After some period of time? Or is it the
 16 ammunition? Or both? The SAC does not explain, and Plaintiffs don’t bother to tell us.”)).

17 Plaintiffs are correct that the Court’s Order did not assess whether Count Three
 18 sufficiently pled a *Monell* claim against the City. The fault of this largely lies with
 19 Plaintiffs’ inarticulate pleading, a fact that Plaintiffs seem to concede. (See Doc. 75 at 9
 20 (stating “Plaintiffs’ presentation is somewhat convoluted.”)). For example, unlike Count
 21 Four of the SAC, which is clearly titled “Violation of 42 U.S.C. §1983 Monell Claim
 22 against City of Scottsdale,” Count Three is simply titled “Violation of 42 U.S.C. § 1983
 23 Fourth Amendment Unreasonable Seizure.” (Doc. 36 at 24 and 26). *But see Shoshone-*
Bannock Tribes v. Fish & Game Comm’n, 42 F.3d 1278, 1284–85 (9th Cir. 1994) (noting
 24 that although the caption of a complaint should be considered, it is generally not
 25 controlling).

26 Given Plaintiffs’ self-described “convoluted” pleading, Defendants understandably
 27 were not on notice of a *Monell* claim in Count Three. Consequently, Defendants’ Motion

1 to Dismiss (Doc. 58) did not specifically seek to dismiss a *Monell* claim against the City in
 2 Count Three; instead, Defendants generally argued that the SAC failed to sufficiently
 3 allege any government policy against the City to give rise to Section 1983 liability.
 4 (Doc. 58 at 14 (“Despite asserting that a number of the defendants are “official policy
 5 makers” for the City, the SAC makes no attempt to allege what policy or practice is the
 6 purported source of Plaintiffs’ injury. Instead, the SAC conclusorily [sic] asserts that policy
 7 makers have enacted policies of suppressing free speech and other constitutional rights.”)).
 8 The Court’s September Order agreed with Defendants as to Plaintiffs’ Count Four and
 9 dismissed that *Monell* claim against the City. (Doc. 71). The Court described Count Four
 10 as follows:

11 Count Four is a Section 1983 claim that the City maintained unlawful
 12 policies in violation of *Monell v. Department of Social Services of New York*,
 13 436 U.S. 658 (1978) (“*Monell*”). (Doc. 36 at ¶¶ 179–215). When liberally
 14 construing Count Four, the Court gleans four theories of *Monell* violations,
 15 which the Court will hereafter refer to as Count Four(a), (b), (c), and (d),
 16 respectively:

- 17 (a) the City ratified Mayor Lane and Attorney Washburn’s actions as
 final policy makers when they carried out the Trespass and Failure to
 Obey Charges against Mr. Stuart as part of the City’s “speech
 suppression policies” and that a civil citation received on October 22,
 2016, is another example of Defendants’ speech suppression policies
 (*id.* at ¶¶ 184, 187–190, 193).
- 18 (b) the City ratified Mayor Lane and Attorney Scott’s actions as final
 policy makers when they carried out the Threats Charges against
 Mr. Stuart as part of the City’s “speech suppression policies” (*id.* at
 ¶¶ 185, 187, 191–92);
- 19 (c) the City ratified Attorneys Washburn and Scott’s actions as final
 policy makers when they denied Mr. Stuart access to exculpatory
 evidence during the Trespass and Failure to Obey Proceedings as part
 of the City’s policies for “due process violation policies” (*id.* at ¶¶
 186, 194); and
- 20 (d) the City, through Attorneys Washburn and Scott, have “trained and
 encouraged their subordinates to violate the equal protection and due
 process rights of others by refusing to recognize and implement well-

1 settled state and federal controlling law regarding statutory and
 2 constitutional right” as exemplified by the continued seizure of
 3 Plaintiffs’ property (*id.* at ¶¶ 206, 200).

4 (Doc. 71 at 11). The Court found that the first policy theory under Four(a) was barred by
 5 the *Rooker-Feldman*, claim preclusion, and issue preclusion doctrines, and the second
 6 policy theory in Four(b) was *Rooker-Feldman* barred. (*Id.* at 53). The Court also
 7 dismissed the policy theories stated in Four(c) and (d) for failure to state a claim, on the
 8 grounds that they failed to identify the express terms of the City’s due process and equal
 9 protection violation policies and failed to articulate how the individual Defendants’
 10 conduct was founded upon a practice of sufficient duration, frequency and consistency
 11 such that those policies had become a traditional method of carrying out those policies.
 12 (*Id.* at 54–55).³ However, because the SAC lacked similar allegations that clearly
 13 referenced the City’s property retention policies, the Court did not similarly assess the
 14 sufficiency of a *Monell* claim against the City in Count Three of the SAC.

15 The Court acknowledges that Count Three is alleged against the City as well as the
 16 Individual Defendants. Construed liberally, the Court should have assessed whether Count
 17 Three withstood Defendants’ Rule 12(b)(6) challenge. Accordingly, the question is now
 18 whether the Court clearly erred in dismissing the City, or whether Count Three sufficiently
 19 alleges a *Monell* claim against it.

20 A. **Facts Relevant to Count Three**

21 In their SAC, Plaintiffs allege that Ms. Stuart turned over Plaintiffs’ guns and
 22 ammunition to Scottsdale police around November 8, 2019. (Doc. 26 ¶ 113). Scottsdale
 23 police lawfully retained the guns and ammunition pursuant to the terms of a 2019 Release
 24 Order that was issued in the Trespassing Prosecution against Mr. Stuart. (*Id.* ¶ 114; *see*

25 ³ The Court also denied Plaintiffs’ request to amend Count Four, noting that when the Court
 26 previously granted Plaintiffs leave to amend their complaint, they “blatantly disregarded”
 27 the Court’s instructions by adding new claims and failing to remove those claims that had
 28 already been brought and decided in Plaintiffs’ and Mr. Stuart’s other federal and state
 cases. (Doc. 71 at 64). The Court found that allowing further amendment would unfairly
 burden the Court and the litigants and were unjustified in light of the many opportunities
 Mr. Stuart had been afforded to amend in this case and his many others. (*Id.*)

1 also September 9, 2024, Order at Doc. 71 at 59 (detailing the Trespassing and Threats
2 Prosecutions against Mr. Stuart)). When the 2019 Release Order expired on May 7, 2021,
3 Plaintiffs say they contacted the Scottsdale Police “several times” about the return of their
4 property. (*Id.* ¶ 116). Plaintiffs allege Scottsdale police said they “were researching the
5 issue of whether Scottsdale could retain the Stuarts guns and ammunition;” that “they knew
6 they had no lawful right to possess the Stuarts guns and ammunition;” and they otherwise
7 “refused to cooperate with Stuart and return the Stuarts property to them.” (*Id.* ¶¶ 119–
8 21). The police returned Plaintiffs’ guns (but not the ammunition) on July 2, 2021. (*Id.* ¶¶
9 116, 118, 112). Plaintiffs say that when they sought to obtain the ammunition “Scottsdale
10 agents” told them it was city policy to retain the ammunition. (*Id.* ¶ 123). Plaintiffs allege
11 that only after “threatening to sue [Defendant City Attorney Scott], did Scott instruct the
12 Scottsdale Police to release the ammunition to Plaintiffs.” (*Id.* ¶ 123–24). The ammunition
13 was released to Plaintiffs on August 5, 2021. (*Id.* ¶ 125).

B. The Sufficiency of Plaintiffs' Count Three *Monell* Claim Under Rules 8 and 12(b)(6)

Rule 8 requires that a pleading contain a “short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2) (emphasis added). As Plaintiffs are aware, while Rule 8 does not demand detailed factual allegations, “it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Id.* Indeed, “a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Id.* (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2005)). A claim is plausible “when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* “Determining whether a complaint states a plausible claim for relief [is] . . . a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” *Id.* at 679. Thus, although a plaintiff’s specific factual allegations

1 may be consistent with a constitutional claim, a court must assess whether there are other
 2 “more likely explanations” for a defendant’s conduct. *Id.* at 681.

3 The *Iqbal* pleading standard applies to *pro se* complaints, but they “must be held to
 4 less stringent standards than formal pleadings drafted by lawyers.” *Hebbe v. Pliler*, 627
 5 F.3d 338, 342 (9th Cir. 2010) (citing *Erickson v. Pardus*, 551 U.S. 89, 94 (2007)).
 6 Although entitled to “great leeway,” a *pro se* litigant’s pleadings “nonetheless must meet
 7 some minimum threshold in providing a defendant with notice of what it is that it allegedly
 8 did wrong.” *Brazil v. U.S. Dep’t of Navy*, 66 F.3d 193, 199 (9th Cir. 1995).

9 When ruling on a motion to dismiss, the court accepts all factual allegations in the
 10 complaint as true and views the pleadings in light most favorable to the nonmoving party.
 11 See *Knievel v. ESPN*, 393 F.3d 1068, 1072 (9th Cir. 2005). That rule does not apply,
 12 however, to legal conclusions. *Iqbal*, 556 U.S. at 678. When considering a motion to
 13 dismiss, a district court “consider[s] only allegations contained in the pleadings, exhibits
 14 attached to the complaint, and matters properly subject to judicial notice.” *Akhtar v. Mesa*,
 15 698 F.3d 1202, 1212 (9th Cir. 2012) (*quoting Swartz v. KPMG LLP*, 476 F.3d 756, 763
 16 (9th Cir. 2007)).

17 In its September Order, the Court found that Count Three sufficiently stated a Fourth
 18 Amendment claim against Individual Defendants Scott, Santaella, and Thompson.
 19 (Doc. 71 at 62). But a municipality may not be sued under Section 1983 solely because a
 20 constitutional injury may have been inflicted by one of its employees or agents. *Long v.*
 21 *Cnty. of Los Angeles*, 442 F.3d 1178, 1185 (9th Cir. 2006). Liability only attaches when
 22 the execution of a municipality’s policy or custom causes the constitutional injury. *Monell*,
 23 436 U.S. at 694; *Miranda v. City of Cornelius*, 429 F.3d 858, 868 (9th Cir. 2005).
 24 Municipal liability can attach under *Monell* in three types of circumstances. First, a
 25 municipality may be liable “when implementation of its official policies or established
 26 customs inflicts the constitutional injury.” *Monell*, 436 U.S. at 708. Second, a city “may
 27 be held liable under § 1983 when ‘the individual who committed the constitutional tort was
 28 an official with final policy-making authority’ or such an official ‘ratified a subordinate’s

1 unconstitutional decision or action and the basis for it.’ ” *Clouthier v. Cty of Contra Costa*,
 2 591 F.3d 1232, 1250 (9th Cir. 2010), overruled on other grounds in *Castro v. Cty. of Los*
 3 *Angeles*, 833 F.3d 1060 (9th Cir. 2016) (cleaned up)). Third, a plaintiff can prevail by
 4 showing certain acts or omission by a local government, such as a pervasive failure to train
 5 municipal employees, but only “when such omissions amount to the local government’s
 6 own official policy.” *Id.* at 1249 (9th Cir. 2010).

7 A policy is “deliberate choice to follow a course of action. . . made from among
 8 various alternatives by the official or officials responsible for establishing final policy with
 9 respect to the subject matter in question.” *Long v. County of Los Angeles*, 442 F.3d 1178,
 10 1185 (9th Cir. 2006); *see also Fogel v. Collins*, 531 F.3d 824, 834 (9th Cir. 2008) (same).
 11 A custom is “a widespread practice that, although not authorized by written law or express
 12 municipal policy, is so permanent and well-settled as to constitute a custom or usage with
 13 the force of law.” *St. Louis v. Praprotnik*, 485 U.S. 112, 127 (1988); *Los Angeles Police*
 14 *Protective League v. Gates*, 907 F.2d 879, 890 (9th Cir. 1990). An unwritten policy or
 15 custom must be so “persistent and widespread” that it constitutes a “permanent and well
 16 settled” practice. *Monell*, 436 U.S. at 691 (internal quotation marks omitted). “Liability
 17 for improper custom may not be predicated on isolated or sporadic incidents; it must be
 18 founded upon practices of sufficient duration, frequency and consistency that the conduct
 19 has become a traditional method of carrying out policy.” *Trevino v. Gates*, 99 F.3d 911,
 20 918 (9th Cir. 1996). However, “contemporaneous or subsequent conduct cannot establish
 21 a pattern of violations that would provide ‘notice to the [municipality] and the opportunity
 22 to conform to constitutional dictates.’ ” *Connick v. Thompson*, 563 U.S. 51, 63 n.7 (2011).

23 Allegations concerning *Monell* liability based on the existence of a policy are
 24 subject to the pleading requirements of *Twombly/Iqbal*. As the Ninth Circuit has explained,
 25 even in the context of a *Monell* claim, a complaint “may not simply recite the elements of
 26 a cause of action, but must contain sufficient allegations of underlying facts to give fair
 27 notice and to enable the opposing party to defend itself effectively,” and “the factual
 28 allegations that are taken as true must plausibly suggest an entitlement to relief, such that

1 it is not unfair to require the opposing party to be subjected to the expense of discovery and
 2 continued litigation.” *AE ex rel. Hernandez v. County of Tulare*, 666 F.3d 631, 637 (9th
 3 Cir. 2012) (*quoting Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011)). While the Ninth
 4 Circuit previously had a liberal pleading standard for *Monell* claims, “[c]ourts in this circuit
 5 now generally dismiss claims that fail to identify the specific content of the municipal
 6 entity’s alleged policy or custom.” *Little v. Gore*, 148 F. Supp. 3d 936, 957 (S.D. Cal. 2015)
 7 (citation omitted).

8 In Count Three, Plaintiffs allege that the City’s “retention of the guns and
 9 ammunition after May 6, 2021, until about August 5, 2021” violated their Fourth
 10 Amendment rights against unreasonable seizure. (*Id.* ¶ 167). They say the City’s
 11 “continued seizure of the Stuarts’ property after July 2, 2021 was pursuant to an official
 12 city policy, according to Scottsdale agents working in the police department property
 13 division.” (*Id.* ¶ 172). Without more, in their Rule 59 Motion, Plaintiffs claim that
 14 reasonable inferences can be made from the SAC’s allegations such that the City can also
 15 be liable under ratification or failure-to-train theories. (Doc. 75 at 7–8).

16 As they did in their Motion to Dismiss, Defendants argue that nothing in Plaintiffs’
 17 SAC “identify something that could be described as a ‘policy,’ much less one that caused
 18 Plaintiffs’ alleged injuries.” (Doc. 82 at 4). Defendants also argue that nothing in Plaintiffs’
 19 SAC suggests this was anything but an “isolated incident of not returning Mr. Stuart’s
 20 firearms and ammunition” and that it cannot be inferred this such a “widespread practice
 21 that it has taken on life as a ‘traditional method of carrying out policy.’ ” (Doc. 82 at 4).

22 **1. Policy, Practice or Custom**

23 Like the allegations in Count Four, Plaintiffs’ conclusory statement that “an official
 24 city policy” was invoked by Scottsdale agents to justify their alleged unlawful retention of
 25 Plaintiffs’ guns is not sufficient to sustain a *Monell* claim against the City under a policy,
 26 practice, or custom theory. In order to withstand a motion to dismiss for failure to state a
 27 claim, a *Monell* claim must consist of more than mere formulaic recitations of the existence
 28 of an unlawful policy. *A.E. ex rel. Hernandez*, 666 F.3d at 637. Plaintiffs ask the Court to

1 make “reasonable inferences” of a City policy from two allegedly unlawful seizures of
 2 their property: (1) when the City’s refused to immediately return their guns and
 3 ammunition after the 2019 Release Order expired; and (2) on July 2, 2021, when the City
 4 refused to return their ammunition after returning their guns. They say these two instances
 5 and the statements by police, show a “pattern of behavior” of illegal property retention
 6 policy. Not so. It is well-established in the Ninth Circuit that a plaintiff asserting a *Monell*
 7 claim must allege *facts* that would support the existence of the alleged policy, practice, or
 8 custom. *See, e.g., A.E. ex rel. Hernandez*, 666 F.3d at 637; *Dougherty v. City of Covina*,
 9 654 F.3d 892, 900–01 (9th Cir. 2011) (holding that plaintiff’s *Monell* claim “lacked any
 10 factual allegations regarding key elements of the *Monell* claims, or, more specifically, any
 11 facts demonstrating that his constitutional deprivation was the result of a custom or practice
 12 of the City of Covina or that the custom or practice was the ‘moving force’ behind his
 13 constitutional deprivation”). *See also Hyer v. City & Cnty. of Honolulu*, 2020 WL
 14 7038953, *6 (D. Hawaii 2020) (noting that “[s]ince *Iqbal*, courts in the Ninth Circuit have
 15 repeatedly rejected *Monell* claims based on conclusory allegations that lack factual content
 16 from which one could plausibly infer municipal liability”) (citations omitted); *Brown v.*
 17 *City of Mariposa*, 2019 WL 4956142, *4 (E.D. Cal. 2019) (noting “while the Court
 18 recognizes the inherent difficulty of identifying specific policies absent access to
 19 discovery, that is nonetheless the burden of plaintiffs in federal court”) (citations omitted).

20 Here, the two incidents cited by Plaintiffs do not state facts that plausibly show an
 21 unlawful property retention policy practiced by agents or officers of the Scottsdale police
 22 department caused Plaintiffs’ injuries. Indeed, Plaintiffs Count Three alleges no facts
 23 identifying the policy or policies allegedly referenced by “Scottsdale agents,” nor do they
 24 provide facts showing that such practices or customs have been in place for a sufficient
 25 duration and with a sufficient consistency such that they could plausibly be a traditional
 26 method of carrying out that policy. *Trevino*, 99 F.3d at 918 (holding that *Monell* liability
 27 based on an “improper custom may not be predicated on isolated or sporadic incidents; it
 28 must be founded upon practices of sufficient duration, frequency and consistency that the

1 conduct has become a traditional method of carrying out policy.”). *See also Blanchard v.*
 2 *City of Los Angeles*, 2021 WL 871997, *3 (C.D. Cal. 2021) (“While the FAC cites to
 3 numerous instances, reports, and cases concerning excessive force and others that have
 4 indicated a tendency to employ excessive force by Sheriff’s Deputies, these do not rise the
 5 level of specificity for *Monell* claims.”). Simply put, Plaintiffs have not plead sufficient
 6 facts from which any reasonable inferences could be drawn nor to put Defendants on notice
 7 of a *Monell* claim. Moreover, the two isolated instances upon which Plaintiff now relies,
 8 is of insufficient frequency and consistency to show a practice or custom. So, to the extent
 9 Count Three is premised on a policy, practice or custom theory, Plaintiffs fail to state a
 10 claim.

11 **2. Failure to Train or Supervise**

12 Municipal liability may also arise when a city fails to adequately train or supervise
 13 its employees. *Anderson v. Warner*, 451 F.3d 1063, 1070 (9th Cir. 2006) (“A failure to
 14 train or supervise can amount to a policy or custom sufficient to impose [§ 1983] liability.”)
 15 (citation omitted). A plaintiff pursuing liability based on a failure to train or supervise
 16 must allege that the municipality exhibited “ ‘deliberate indifference to the rights of
 17 persons’ with whom those employees are likely to come into contact.” *Lee v. City of Los*
 18 *Angeles*, 250 F.3d 668, 681 (9th Cir. 2001) (citation omitted).

19 “ ‘[D]eliberate indifference’ is a stringent standard of fault, requiring proof that a
 20 municipal actor disregarded a known or obvious consequence of his action.” *Bd. of Cnty.*
21 Comm’rs of Bryan Cnty., Okl. v. Brown, 520 U.S. 397, 410 (1997). It may be shown if
 22 “the need for more or different training is so obvious, and the inadequacy so likely to result
 23 in the violation of constitutional rights, that the policymakers of the city can reasonably be
 24 said to have been deliberately indifferent to the need.” *City of Canton, Ohio v. Harris*, 489
 25 U.S. 378, 390 (1989). Additionally, “[a] pattern of similar constitutional violations by
 26 untrained employees is ‘ordinarily necessary’ to demonstrate deliberate indifference for
 27 purposes of failure to train.” *Connick v. Thompson*, 563 U.S. 51, 62 (quoting *Brown*, 520
 28 U.S. at 409). Plaintiffs are required to show that “policymakers were on actual or

1 constructive notice that a particular omission in their training program causes. . . employees
 2 to violate citizens' constitutional rights," but chose not to remedy the omission. *Id.* at 61.
 3 "Without notice that a course of training is deficient in a particular respect, decisionmakers
 4 can hardly be said to have deliberately chosen a training program that will cause violations
 5 of constitutional rights." *Id.* at 62. Notably, "[a] municipality's culpability for a
 6 deprivation of rights is at its most tenuous where a claim turns on a failure to train." *Id.* at
 7 61.

8 Plaintiffs allege that "[i]n 2021, [City Attorney] Scott was aware that Scottsdale
 9 policies and practices on retention of criminal suspects property after a case has terminated
 10 violated Ninth Circuit precedent . . . [and] [d]espite her knowledge of the unlawfulness of
 11 policy property retention practices, Scott agreed to allow Scottsdale police to continue to
 12 violate unreasonable seizure law. Scott's deliberate indifference to the Fourth Amendment
 13 rights of criminal suspects directly caused the unreasonable continued seizure of the Stuarts
 14 property." (Doc. 36 ¶ 168). Plaintiffs further allege that "In July 2021, Mark Stuart asked
 15 the police to call [Assistant City Attorney] Luis Santaella to get him to release the Stuarts
 16 ammunition. The police in the property and evidence office called Santaella, while Stuart
 17 waited for the police to release the Stuarts ammunition. Santaella instructed the police not
 18 to release the Stuarts ammunition to them." (*Id.* ¶ 169). In their Motion, Plaintiffs argue
 19 that a "reasonable inference" from these allegations is that the City "is aware of the need
 20 to update its property retention policies and to provide training to Scottsdale police of Ninth
 21 Circuit Fourth Amendment law but refuses to do so." (Doc. 75 at 7).

22 The Court agrees with Defendants that these allegations do not sufficiently state a
 23 failure-to-train *Monell* claim. First, as noted, the SAC fails to provide non-conclusory
 24 allegations of a pattern of similar constitutional violations, and such a pattern alone is
 25 "ordinarily necessary" to support a failure-to-train claim. *Connick*, 563 U.S. at 62. See
 26 also *Wettstein v. City of Riverside*, 2020 WL 2199005, *5 (C.D. Cal. 2020) ("While there
 27 is no *per se* rule for the amount of unconstitutional incidents required to establish a custom
 28 under *Monell*, one or two incidents ordinarily cannot establish a custom, while more

1 incidents may permit the inference of a custom, taking into account their similarity, their
 2 timing, and subsequent actions by the municipality. The Ninth Circuit and district courts
 3 within the Ninth Circuit have repeatedly declined to infer a custom of constitutional
 4 violations based on two unconstitutional incidents alone.”) (cleaned up) (collecting cases).
 5 Second, Plaintiffs have failed entirely to provide *any* allegations about the City’s training
 6 program in the SAC. As a result, the SAC does not plausibly allege that the deficiencies
 7 in this undescribed training program were somehow the cause of any supposed, unspecified
 8 earlier incidents or that the deficiency in the program served as the causal link for Plaintiffs’
 9 injuries. No reasonable inferences can be drawn from an absence of facts.

10 **3. Ratification or Failure to Investigate**

11 “[A] local government may be held liable under § 1983 when ‘the individual who
 12 committed the constitutional tort was an official with final policy-making authority’ or
 13 such an official ‘ratified a subordinate’s unconstitutional decision or action and the basis
 14 for it.’ ” *Clouthier*, 591 F.3d at 1250 (citation omitted). Ratification can be demonstrated
 15 by a failure to discipline. *Id.* at 1253. However, “[a] policymaker’s knowledge of an
 16 unconstitutional act does not, by itself, constitute ratification.” *Christie v. Iopa*, 176 F.3d
 17 1231, 1239 (9th Cir. 1999). The policymaker must make a “conscious, affirmative choice”
 18 to approve the conduct at issue. *Clouthier*, 591 F.2d at 1250.

19 Plaintiffs allege that Thompson and Scott are official policy makers of the City
 20 “regarding retention of property by the city of Scottsdale.” (Doc. 36 ¶¶ 182, 183). In their
 21 Motion, Plaintiffs argue that Defendants can reasonably infer that the City, “acting through
 22 its policymakers city manager Thompson and city attorney Scott, is aware that the police
 23 are routinely violating Ninth Circuit Fourth Amendment law, and condones these
 24 violations.” (Doc. 75 at 7). The SAC, however, is devoid of any facts demonstrating that
 25 these two policymakers made a “conscious, deliberate choice” to ratify unconstitutional
 26 conduct by subordinates. Nor does it provide facts that there was a policy or custom of
 27 declining to investigate similar incidents. Nothing in Plaintiffs’ recitation of the facts
 28 relating to Count Three (Doc. 36 ¶¶ 113–126) describe Thompson as being involved in the

1 retention of Plaintiffs' property in any manner—nowhere do Plaintiffs allege that he knew
 2 of and/or condoned a City employee's retention of Plaintiffs' property. As for Scott,
 3 Plaintiffs allege that after Mr. Stuart contacted her via email and threatened to sue the City,
 4 she "instructed Scottsdale police to release the Stuarts ammunition to them." (Doc. 36 ¶
 5 124). Yet, this is the opposite of condoning or causing unconstitutional action. *See Edgerly*
 6 *v. City & County of San Francisco*, 599 F.3d 946, 960 (9th Cir. 2010) (a municipal
 7 defendant is liable only where the municipality's policies or customs "evince a 'deliberate
 8 indifference' to the constitutional right and are the 'moving force' behind the constitutional
 9 violation"). Plaintiffs thus fail to state a claim on a theory of ratification or failure to
 10 investigate or discipline.

11 C. Leave to Amend

12 The question now is whether to allow Plaintiffs' leave to amend their SAC again.
 13 "Rule 15 advises the court that leave [to amend] shall be freely given when justice so
 14 requires. This policy is to be applied with extreme liberality." *Eminence Capital, LLC v.*
 15 *Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003) (citations and internal quotation marks
 16 omitted). Nevertheless, "liberality in granting leave to amend is subject to several
 17 limitations." *United States ex rel. Cafasso v. Gen. Dynamics C4 Sys.*, 637 F.3d 1047, 1058
 18 (9th Cir. 2011) (citation and internal quotation marks omitted). "Those limitations include
 19 undue prejudice to the opposing party, bad faith by the movant, futility, and undue delay."
 20 *Id.* Also, "when a district court has already granted a plaintiff leave to amend, its discretion
 21 in deciding subsequent motions to amend is 'particularly broad.'" *Chodos v. W. Publishing*
 22 *Co.*, 292 F.3d 992, 1003 (9th Cir. 2002) (citation omitted).

23 Plaintiffs filed their original Complaint on November 12, 2021 (Doc. 1) and
 24 amended it as a matter of right on December 12, 2021 (Doc. 14). Defendants moved to
 25 dismiss the Amended Complaint on January 21, 2022 (Doc. 21). Noting the significant
 26 factual and claim overlap between this matter and Mr. Stuart's two other federal pending
 27 actions, the Court dismissed the Amended Complaint and granted Plaintiffs' leave to file a
 28 second amended complaint. (Doc. 35). In doing so, the Court specifically instructed

1 Plaintiffs that they “shall remove the claims asserted in the FAC that have been adjudicated
 2 and are now precluded so that the Court can properly and accurately assess what claims, if
 3 any, should remain. To be clear, the Court is not authorizing Plaintiffs to add any new
 4 claims or parties. The Court will not look favorably on amendments to claims that have
 5 already been litigated and/or adjudicated in the 2017 and 2020 Actions.” (*Id.* at 8).
 6 Plaintiffs entirely ignored the Court’s instructions. (*See* Doc. 71 at 64). In their SAC, they
 7 neither removed the many causes of action that had already been litigated, nor refrained
 8 from adding more claims to their SAC. Defendants, in response to the SAC, filed a Motion
 9 to Strike. (Doc. 41).⁴ After briefing was complete, Magistrate Judge Boyle issued a
 10 Report and Recommendation on the Motion to Strike (Doc. 53), which the Court adopted.
 11 (Doc. 57). In doing so, the Court granted Defendants’ motion to strike Counts Seven and
 12 Eight of the SAC, which were newly added claims in direct contradiction of the Court’s
 13 prior Order. (*Id.* at 6). But the Court agreed with Judge Boyle that it was improper to
 14 strike Counts One through Six because to do so would amount to a merits determination
 15 that the claims were precluded. (Doc. 57 at 6). The Court instead ordered Defendants to
 16 answer or otherwise respond to these counts. (*Id.*) Defendants then filed their second
 17 Motion to Dismiss (Doc. 58), which the Court granted as to all but one claim against three
 18 Defendants. (Doc. 71, 86). This case is now approximately three years old and discovery
 19 has just begun. Affording Plaintiffs yet another opportunity to amend would, as described
 20 herein, result in undue delay, be unduly prejudicial to Defendants, and be futile.

21 **III. Conclusion**

22 Like Plaintiffs’ Count Four *Monell* claim, Plaintiffs’ allegations that the City had a
 23 policy or practice that caused Plaintiffs’ alleged Fourth Amendment violations is
 24 implausibly and deficiently plead. Plaintiffs’ Count Four against the City will be dismissed
 25 with prejudice according to the Court’s authority under Rule 8 and the need to protect

26
 27 ⁴ In the interim, Plaintiffs also sought a Temporary Restraining Order seeking to enjoin
 28 non-parties City of Scottsdale, City of Tempe, City of Phoenix, and Maricopa County
 prosecutors from prosecuting him under A.R.S. § 13-1202 (A)(1) for threats he allegedly
 made during conversations with his doctors (Doc. 49). The Court denied the request (Doc.
 51).

1 against unfair burdens on litigants and judges. *See* Fed. R. Civ. P. 8(a), (d)(1); *McHenry*
2 *v. Renne*, 84 F.3d 1172, 1177 (9th Cir. 1996) (affirming dismissal with prejudice of
3 amended complaint that did not comply with Rule 8(a)); *see also Ferdik v. Bonzelet*, 963
4 F.2d 1258, 1261 (9th Cir. 1992) (affirming dismissal with prejudice where district court
5 had instructed *pro se* plaintiff regarding deficiencies in prior order dismissing claim with
6 leave to amend). Thus, though the Court erred in not assessing the sufficiency of Plaintiffs'
7 Count Four *Monell* claim in its September Order, it did not err in dismissing the City as a
8 Defendant.

9 Accordingly,

10 **IT IS ORDERED** that Plaintiffs' Rule 59(e) Motion to Amend (Doc. 75) is **granted**
11 in part. The Court's September Order (Doc. 71) is **amended** to incorporate this Order's
12 analysis of Count Four against the City at 5:25–15:16. In all other respects, the Motion is
13 **denied**.

14 Dated this 7th day of November, 2024.

15
16
17
18
19
20
21
22
23
24
25
26
27
28



Honorable Diane J. Humetewa
United States District Judge